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*** E-filed August 10, 2012 **

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

BAYKEEPER, a non-profit corporation,

Plaintiff,

v.

ZANKER ROAD RESOURCE
MANAGEMENT, LTD.,

Defendant.

Civil Case No. C 12-02157-HRL

Hon. Howard R. Lloyd

**NOTICE OF TENTATIVE
SETTLEMENT; REQUEST TO
VACATE INITIAL CASE
MANAGEMENT CONFERENCE AND
RELATED DEADLINES; MOTION TO
EXTEND TIME (CIV. L.R. 7-11);
[PROPOSED] ORDER
(MODIFIED BY THE COURT)**

TO THE COURT AND TO THE PARTIES:

PLEASE TAKE NOTICE that Plaintiff Baykeeper (“Baykeeper”) and Zanker Road Resource Management, Ltd. (“Zanker”) (collectively, the “Parties”) have reached a tentative settlement in this action, which has been executed by the Parties. As required by federal law, a copy of the [Proposed] Consent Decree has been sent to the U.S. Department of Justice and to the U.S. Environmental Protection Agency (collectively “the Agencies”) for a mandatory 45-day review period under Section 135.5 of Title 40 of the Code of Federal Regulations. Copies of the [Proposed] Consent Decree will be sent to the Agencies via U.S. Certified Mail on today’s date. Because the Agencies interpret the 45-Day review period as commencing on the date the Agencies receive the [Proposed] Consent Decree, Plaintiff will promptly notify the Court in writing upon expiration of the 45-Day review period, and shall advise the Court as to whether any objections were received from the Agencies. Upon expiration of the 45-Day review period, the Parties will jointly request that the Court (1) approve and execute an Order dismissing the Complaint and (2) approve and execute the [Proposed] Consent Decree which provides for continuing Court jurisdiction over any disputes which may arise between the parties under the agreement.

Consistent with the impending settlement of this action, the Parties hereby respectfully request that the Court vacate from its calendar the August 14, 2012 Initial Case Management Conference and associated deadlines. Should the Court require any additional information, the undersigned will be pleased to provide it upon request.

MOTION TO EXTEND TIME

I. INTRODUCTION

Plaintiff Baykeeper hereby requests an extension of time to serve the Complaint in this action upon Defendant Zanker Road Resource Management, Ltd. (“Zanker”). Baykeeper filed its Complaint on April 30, 2012, at which time the Parties had begun negotiating an agreement. *See* Declaration of Andrea Kopecky in Support of Motion to Extend Time, ¶ 5. Plaintiff has not yet served the Defendant with the Complaint, and the time in which Plaintiff is required to serve the Complaint has not yet run. *Id.*; see Fed. R. Civ. Pro., rule 4(m). The Parties have now executed a [Proposed] Consent Decree on August 9, 2012. On August 9, 2012, the [Proposed] Consent Decree was submitted to the U.S. Department of Justice (“DOJ”) for its 45 day review and comment period. *Id.* at ¶ 7-8. Following the DOJ review period, the Plaintiff will submit the approved [Proposed] Consent Decree to the Court, together with a motion to dismiss the Complaint, saving the Court’s continuing jurisdiction to enforce the approved Consent Decree. *Id.* at ¶ 8. Therefore, Plaintiff requests an extension of time to serve the Complaint in this action upon Defendant, until after such time as the [Proposed] Consent Decree has been reviewed by DOJ, and Plaintiff has had an opportunity to file the [Proposed] Consent Decree and stipulation to dismiss the case, with the Court.

II. POINTS AND AUTHORITIES

Federal Rule of Civil Procedure 4(m) provides:

Time Limit for Service. If a defendant is not served within 120 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

Here, the time for service of the Complaint has not yet expired. Taking a proactive approach, however, Plaintiff has shown good cause for the Court to extend the upcoming deadline for service from August 28, 2012, to October 27, 2012.

The Court has the inherent power to regulate litigation. *See, e.g.,* Annotations to FRCP 16; *cf. Societe Internationale Pour Participations Industrielles et Commerciales, S.A. v. Rogers*, 357 U.S. 197

(1958). It therefore has the discretion, by motion made under Local Rule 7-11, to vacate or extend the time to serve the Complaint. Plaintiff therefore requests that, in the interests of justice and judicial economy, the Court exercise that discretion and vacate or extend the deadline for serving the Complaint by 60 days to permit the Parties sufficient time to implement the conditions subsequent set forth in the [Proposed] Consent Decree.

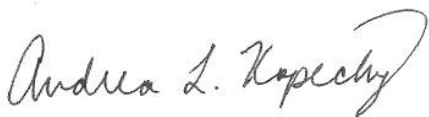
III. CONCLUSION

For all the foregoing reasons, we respectfully request the Court grant this motion to extend the deadline by which Plaintiff must serve the Complaint, as allowed by FRCP 4(m), for a period of not less than 60 days.

Dated: August 9, 2012

Respectfully Submitted,

By:



Andrea Kopecky
Attorney for Plaintiff
BAYKEEPER

~~[PROPOSED]~~ ORDER

GOOD CAUSE APPEARING,

The Parties' Initial Case Management Conference on August 14, 2012, is vacated. Plaintiff's time to serve the Complaint is extended to October 27, 2012.

IT IS SO ORDERED

Date: August 10, 2012

NORTHERN DISTRICT OF CALIFORNIA



Honorable Howard R. Lloyd
United States District Court

In light of the parties' tentative settlement, all pending case management deadlines are also vacated. All parties shall appear on November 6, 2012 at 10:00 AM in Courtroom 2, Fifth Floor, San Jose, CA and show cause why, if any, this case should not be dismissed. The parties shall file a Joint Statement in response to this Order to Show Cause no later than October 30, 2012. The joint statement shall state (1) the status of the activities of the parties in finalizing settlement; and (2) how much additional time, if any, is needed to finalize the settlement and file a dismissal. However, if a dismissal and consent decree are filed before the hearing date, the Show Cause hearing will be automatically vacated and no statement will be required.

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**DECLARATION OF ANDREA
KOPECKY IN SUPPORT OF
PLAINTIFF'S MOTION TO EXTEND
TIME**

1 I, Andrea Kopecky, declare as follows:

2 1. I am a duly licensed attorney admitted to the bar in the State of California and to practice before
3 the United States District Court for the Northern District of California. I am an Associate Attorney for
4 Plaintiff San Francisco Baykeeper ("Baykeeper") in the above-captioned action. I have personal
5 knowledge of the following facts and if called upon to do so, I could and would testify thereto.

6 2. I submit this declaration pursuant to Civil L.R. 7-11 in support of Plaintiff's Motion to Extend
7 Time ("Motion").

8 3. On February 29, 2012, Baykeeper sent a 60-day notice letter to Zanker Road Resource
9 Management, Ltd. ("Zanker") for violations of the Clean Water Act.

10 4. During the 60-day notice period, Zanker and Baykeeper began negotiating a settlement.

11 5. At the end of the 60-day notice period, on April 30, 2012, Baykeeper filed a Complaint against
12 Zanker. Because settlement negotiations were ongoing, Baykeeper elected not to serve the Complaint to
13 Zanker at that time.

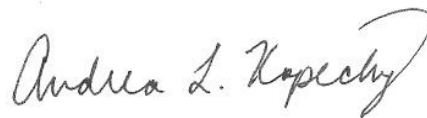
14 6. The Parties continued to negotiate and came to a final [Proposed] Consent Decree. The Parties
15 executed the [Proposed] Consent Decree on August 9, 2012.

16 7. On August 9, 2012, the [Proposed] Consent Decree was submitted to the U.S. Department of
17 Justice ("DOJ") for review and approval, as required by law. DOJ has 45 days from receipt of the
18 [Proposed] Consent Decree to review it.

19 8. If DOJ approves the [Proposed] Consent Decree, the Parties will submit the [Proposed] Consent
20 Decree to the Court along with a motion to dismiss the Complaint.

21 I declare under penalty of perjury that the foregoing is true and correct.

22 Executed within the United States on this 9th day of August, 2012.

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26 Andrea Kopecky
27 BAYKEEPER
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